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REMARKS

Claims 1-10 and 12-22 are currently pending in the subject application and are presently under consideration.

The Examiner should be aware that the primary reference, Schuessler *et al.* (US Patent No. 6,332,575), is commonly owned by the assignee (Symbol Technologies, Inc.) of the subject invention. Therefore, Schuessler *et al.* is disqualified as a prior art reference for the §103(a) rejection in view of 35 U.S.C. §103(c). To the extent the Examiner deems appropriate, applicant's representative is prepared to file a terminal disclaimer with respect to the patent and this application.

Favorable reconsideration of the subject patent application is respectfully requested in view of the comments herein.

I. Objection to Claim 12 to Correct Informalities

The Examiner objects to the inclusion of "type" in claim 12 and states that deletion will cure the informality. Withdrawal of this objection is respectfully requested because "type" modifies "dataform" and is required for comprehensibility reasons.

II. Rejection of Claim 22 Under 35 U.S.C §102(e)

Claim 22 stands rejected under 35 U.S.C. §102(e) as being anticipated by Schuessler *et al.* (US Patent No. 6,332,575). It is respectfully submitted that this rejection should be withdrawn for at least the following reasons. Schuessler *et al.* does not disclose each and every element as set forth in the subject claims.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

As recited in the Reply to Office Action dated September 26, 2002, independent claim 22 recites a *portable* image collecting module, comprising a first indicator operable

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to provide an indication of a valid read of a first portion of a hybrid dataform, and a second indicator operable to provide an indication of a valid read of a second portion of the hybrid dataform, wherein the first indicator and the second indicator each in the form of one of an audio signal, a photo signal, and a vibration signal.

Schuessler *et al.* does not disclose or suggest a *portable* image collecting module utilizing at least one of an audio signal, a photo signal, and a vibration signal for indicating a read status of a hybrid dataform. Withdrawal of this rejection and allowance of claim 22 is respectfully requested.

III. Rejection of Claims 1-10 and 12-22 Under 35 U.S.C §103(a)

Claims 1-10 and 12-22 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Schuessler *et al.* in view of Giordano *et al.* (US Patent No. 6,321,990). It is again noted that the Examiner should be aware that the primary reference, Schuessler *et al.* (US Patent No. 6,332,575), is commonly owned by the assignee (Symbol Technologies, Inc.) of the subject invention and thus, the primary reference is not valid citable art in view of 35 U.S.C. §103(c). To the extent the Examiner deems appropriate, applicant's representative is prepared to file a terminal disclaimer with respect to the patent and this application.

Giordano *et al.* fails to make up for the aforementioned deficiencies of Schuessler *et al.* with respect to independent claims 1, 13, 20, 21, and 22 (and claims 2-10, 12, and 14-19 which depend therefrom). Accordingly, since Schuessler *et al.* is not valid citable art and Giordano *et al.* fails to make up for the deficiencies of Schuessler *et al.*, claims 1-10 and 12-22 are not obvious. Withdrawal of this rejection and allowance of such claims is respectfully requested.

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IV. Conclusion

The present application is believed to be condition for allowance in view of the above comments. A prompt action to such end is earnestly solicited.

In the event any fees are due in connection with this document, the Commissioner is authorized to charge those fees to Deposit Account No. 50-1063.

Should the Examiner believe a telephone interview would be helpful to expedite favorable prosecution, the Examiner is invited to contact applicant's undersigned representative at the telephone number listed below.

Respectfully submitted,
AMIN & TUROCY, LLP



Himanshu S. Amin
Reg. No. 40,894

AMIN & TUROCY, LLP
24TH Floor, National City Center
1900 E. 9TH Street
Cleveland, Ohio 44114

Telephone (216) 696-8730
Facsimile (216) 696-8731

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